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EXAMINER

MATTER, KRISTEN CLARETTE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN J. SOLYNTJES, FLOYD L. FOSLIEN and
BENJAMIN A. JOHNSON

Appeal 2010-003043
Application 10/750,077
Technology Center 3700

Before SCOTT R. BOALICK, KARL D. EASTHOM, and ERIC B. CHEN,
Administrative Patent Judges.

CHEN, *Administrative Patent Judge.*

DECISION ON REQUEST FOR RECONSIDERATION

Appellants request rehearing under 37 C.F.R. § 41.52 of our Decision on Appeal entered July 22, 2011, where we affirmed the Examiner's final rejection of claims 1-27. Appellants seek relief in the form of an amendment to the Specification and a decision reversing the rejections. (Req. for Reh'g 5.)

The request for relief is denied.

DISCUSSION

Rejection of claims 1-14 and 17-27 as being obvious over Metzger and Dumortier

Appellants argue that "Dumortier's connection feature would not be applicable for respirator use" because "the Dumortier manhole cover assembly is intended only to function in a horizontal orientation, such as in a roadway, and would not provide a connection that is 'incapable of being inadvertently removed or separated.'" (Req. for Reh'g 2.) In particular, Appellants argue that "[t]he connection does not provide a locking function in other orientations in which gravity is not acting to maintain pawl 7 in a locked position." (Req. for Reh'g 3.) To support this position, Appellants point to paragraph 6 of an Affidavit under 37 C.F.R. § 1.132 of Alan J. Solyntjes, dated September 13, 2011. (Req. for Reh'g 3.)

However, these are new arguments and evidence not raised in the Briefs before the Board. Such new arguments will not be considered.¹ "Arguments not raised in the briefs before the Board and evidence not previously relied upon in the brief and any reply brief(s) are not permitted in

¹ To have these new arguments and evidence considered by the Examiner, Appellants can file a request for continued examination (RCE) under 37 C.F.R. § 1.114.

the request for rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section.” 37 C.F.R. § 41.52(a)(1). Appellants have not identified a reason for meeting one of these exceptions.

Appellants also argue that “[t]he connection described by Dumortier . . . can be separated non-destructively *without* the use of a key,” contrary to the definition of “incapable of being inadvertently removed or separated” defined in the Specification. (Req. for Reh’g 4.) In particular, Appellants argue that the language in column 6, lines 25-31 of Dumortier that a “lever is especially advantageous when pulverulent deposits may interfere with displacement of the pawl between its open and closed positions” suggests that the connection can be separated without a key. (Req. for Reh’g 4.)

Again, these are new arguments not raised in the Briefs before the Board and such new arguments will not be considered. 37 C.F.R. § 41.52(a)(1).

Rejection of claims 1-3, 7, 8, 10-16, 18-20, 23 and 24 as being obvious over Metzger and Del Rio

Appellants further “encourage the Board to exercise its authority under 37 CFR § 41.50(c) regarding how the application may be amended to overcome this rejection.” (Req. for Reh’g 5.) In particular, Appellants propose that “an amendment to the specification which removes the term ‘input’ from the definition of ‘key,’ is suggested.” (Req. for Reh’g 5.)

However, 37 C.F.R. § 41.50(c) recites that “[t]he opinion of the Board may include an explicit statement of how *a claim on appeal may be amended* to overcome a specific rejection” (emphasis added). Thus, we decline Appellants’ invitation to amend the Specification because such an

Appeal 2010-003043
Application 10/750,077

amendment is outside the scope of our discretionary authority under this Rule.

CONCLUSION

The request for relief is denied.

DENIED

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